

STATE OF MICHIGAN
COURT OF APPEALS

LUMBERMEN'S UNDERWRITING
ALLIANCE, as subrogee of EQUITY PLANNING
CORPORATION,

UNPUBLISHED
May 19, 2005

Plaintiff-Appellant,

v

RUE CONSTRUCTION COMPANY, INC., and
CONCRETE CUTTING & BREAKING, INC.,

No. 252060
Saginaw Circuit Court
LC No. 03-049155-CZ

Defendants-Appellees.

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants' motions for summary disposition. The trial court found that the action was time-barred as the statute of limitations had expired. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff provided property insurance to the owner of a shopping center in Saginaw. A lessee contracted with defendant Rue Construction Company to perform renovations on the property. Rue in turn contracted with defendant Concrete Cutting & Breaking, Inc., to cut out a portion of the concrete floor. While that work was being performed on September 21, 1999, a number of underground electrical lines were severed, cutting off power to a portion of the shopping center. Plaintiff paid its insured for damages sustained due to the loss of power, and filed this action to recover from defendants on July 23, 2003. The trial court granted defendants' motions for summary disposition, finding that the three-year statute of limitations of MCL 600.5805(10) barred the action.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Issues of statutory interpretation are reviewed de novo as well. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

MCL 600.5805 provides, in pertinent part:

(1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section.

* * *

(10) The period of limitations is 3 years after the time of the death or injury for all other actions to recover damages for the death or a person, or for injury to person or property.

* * *

(14) The period of limitations for an action against a state licensed architect, professional engineer, land surveyor, or contractor based on an improvement to real property shall be as provided in section 5839.

MCL 600.5839(1) provides:

No person may maintain any action to recover damages for any injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective and unsafe condition of an improvement to real property, nor any action for contribution or indemnity for damages sustained as a result of such injury, against any state licensed architect or professional engineer performing or furnishing the design or supervision of construction of the improvement, or against any contractor making the improvement, more than 6 years after the time of occupancy of the completed improvement, use, or acceptance of the improvement, or 1 year after the defect is discovered or should have been discovered, provided that the defect constitutes the proximate cause of the injury or damage for which the action is brought and is the result of gross negligence on the part of the contractor or licensed architect or professional engineer. However, no such action shall be maintained more than 10 years after the time of occupancy of the completed improvement, use, or acceptance of the improvement.

Plaintiff asserts that the trial court erred in finding that the present injury did not arise out of an improvement to real property under § § 5805(14) and 5839(1). In *Pendzsu v Beazer East, Inc*, 219 Mich App 405; 557 NW2d 127 (1996), this Court followed the reasoning of *Adair v Koppers Co, Inc*, 741 F2d 111 (CA 6, 1984), in construing the phrase “improvement to real property.” The Court defined improvement as a “permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.” *Pendzsu, supra* at 410, quoting *Adair, supra* at 114. The test for an improvement is whether it adds to the value of realty, not whether an improvement can be removed without damage to the land. *Pendzsu, supra* at 410-411. The nature of the improvement and the permanence of the improvement should also be considered. *Id.* at 411. As part of a court’s

determination whether work constitutes an improvement rather than a repair, the work must be considered in light of the system, and not just the component. *Id.*

Here, the concrete cutting was part of a renovation of leased space at the shopping center. If a component of an improvement is an integral part of the improvement to which it belongs, then the component constitutes an improvement to real property. *Travelers Ins Co v Guardian Alarm Co of Michigan*, 231 Mich App 473, 478; 586 NW2d 760 (1998). However, the only evidence provided to the trial court was that defendants removed a portion of a concrete slab. The party opposing a motion for summary disposition has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 363; 547 NW2d 314 (1996). Review is limited to the evidence that has been presented to the trial court at the time the motion was decided. *Peña v Ingham Co Rd Comm*, 255 Mich App 299, 313 n 4; 660 NW2d 351 (2003). Given the limited evidence presented, the trial court did not err in finding that the six-year limitations period of § 5839 was not applicable. On review of the entire record, we conclude that plaintiff failed to present evidence, sufficient to survive summary disposition, showing a claim arising out of a “defective and unsafe condition of an improvement to real property.”

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski